alleged payments made previously, no relation can be seen to equate the sum of $6,909 with any such allegations. The agreement did not spell out any terms. On the other hand, it specifically spelt out that the terms and conditions were to be negotiated. The letter of October 23, 1975, which is now reproduced

"23rd October, 1975.

Syarikat Paramount Limestone Sdn. Bhd.,
8, Ceylon Avenue,
Off Jalan Abdul Jalil,
Ipoh.

Sirs,

Re: *Agreement dated 9.10.1975*

We refer to your Consultant's Drawing No. NC 105/75 and wish to inform you that our proposals to blast the southern quarry faces have been thwarted by the mine operators of SG 6062 (Lot 67887) and therefore we are forced to restrict quarry operations to the northern faces.

It appears that before we can commence blasting operations on the northern faces we have to comply with conditions h2 and h3 of the approval letter KT 55-2 SJ 1/6 dated April 18, 1975. This means that your Consultant has to submit proposals to deviate (and or restore Sg. Anak Air Tonggang) and to construct metalled access roads to the crusher plant. Kindly instruct your Consultant to commence work on these proposals as soon as possible. We undertake to advance his fees and charges.

Yours faithfully,
Sgd. ?
(Secretary)
NADER MINERALS DEVELOPMENT
SDN. BERHAD.

c.c Nader Consultants."

did not request any lease or any undertaking to grant a lease, and the question must obviously be asked, why, if there was such an agreement to grant a lease, the respondents had not previously referred to it or used it to lodge a caveat since clearly an agreement to grant a lease is a registrable interest within the meaning of section 323 of the National Land Code.

Miss Patricia Loh in an affidavit averred that it was a forgery and gave reasons why it was a forgery. Suffice it to say, the reasons were not conclusive and no confidence could be placed on her reasoning since for some reasons not clear to me, she had failed to ask for inspection of the document. I do not understand how she could claim that the signature was not hers but only photostated on the document, when she had not seen it.

The document, if it is an agreement to grant a lease, is clearly one that requires to be stamped under the Stamp Ordinance. The fact is, it is not stamped. Learned counsel for the applicants did not object to its introduction in evidence, as he was obviously entitled to do, since even if it was insufficiently stamped despite Rule 4 of the Rules and Etiquette under the Advocates and Solicitors Ordinance, 1947, it went to the root of the matter.

Having regard to the failure to stamp the document, I impounded it under section 51 of the Stamp Ordinance and ruled under section 52 of the said Ordinance against its admissibility in evidence.

The matter must now be decided on whether the two caveats should be allowed to stand on the grounds advanced.

Section 323(1) of the National Land Code insofar as it is relevant to these proceedings reads:

"323(1). The persons and bodies at whose instance a private caveat may be entered are —

(a) any person or body claiming title to or any registrable interest in, any alienated land or any right to such title or interest."

On the evidence before me, the right of the respondents sprang from the agreement of October 9, 1975, which had not been extended. Even if it had not been determined effectively by valid notice on March 1, 1976, it had now been determined by effluxion of time. The respondents can have no title or registrable interest to the land under such an expired agreement.

If as the respondents claimed they had advanced money to the applicants or any of their agents, or if they had expended money on the land but were frustrated from working the quarry by any default on the part of the applicants, they might have a claim against them, as the respondents themselves must be regarded as having tacitly admitted by filing the Civil Suit No. 210/77, but their claim, not being a title to or any registrable interest in the land, cannot be protected by any caveat.

An order therefore is made for the removal of the caveat lodged on June 9, 1977 in terms of the first prayer (a). No order needs to be issued in respect of the third prayer (c), since under section 327(2), the Registrar will remove the caveat on being served with the order I have just made. As for the second prayer (b) that the respondents be precluded from registering further caveats against the said piece of land, no order in terms is clearly possible. However under section 329(2), the Registrar shall not entertain any application for the entry of a further caveat if it is based on the like claim as that on which the former one was based. The respondents will pay the costs of this application.

Order accordingly.

Solicitors: *Lewis & Co.; Mahendran & Co.*

SIN CHEOK CHOONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Harun J.) December 24, 1977]

[Kuala Lumpur — Federal Territory Criminal Appeal No. 28 of 1977]

Criminal Law and Procedure — Drug-trafficking — Appellant found filling drugs into a plastic tube — Conviction — Appeal — Dangerous Drugs Ordinance, 1952, s. 39B(1)(c).

Dangerous drugs — Trafficking — Heroin and morphine — Appellant found filling drugs into a plastic tube — Dangerous Drugs Ordinance, 1952, s. 39B(1)(c).

The police raided the premises at No. 12A Jalan Sarawak, Kuala Lumpur and found the appellant filling drugs into a plastic tube. On seeing the police, the appellant tried to escape by jumping from the first floor. In the room the police recovered 18 plastic packets and 72 plastic tubes containing 55.37 gms of heroin and 8.58 gms of morphine and 249 empty plastic tubes. The room was rented by one Ah Kee. In his defence the appellant claimed that he was a drug addict and had gone on that day to see Ah Kee to buy drugs. Ah Kee

was not in so he helped himself by pouring the drugs into a plastic tube when the police arrived. The learned President convicted him of the offence of drug trafficking. He appealed.

Held, dismissing the appeal: there was ample evidence to support the finding of the learned President. If the purpose of the appellant in visiting the room was merely to help himself to drugs all he had to do was to pick up a few of the 72 filled plastic tubes. There was no necessity to fill a new plastic tube.

CRIMINAL APPEAL.

Jagjit Singh for the appellant.

Zaleha Zahari (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Harun J.: This is an appeal from the decision of the President of the Sessions Court, Kuala Lumpur in convicting the appellant under section 39B(1)(c) of the Dangerous Drugs Ordinance, 1952 and sentencing him to life imprisonment.

The prosecution's case is that on May 26, 1976 the police raided premises No. 12-A Jalan Sarawak, off Jalan Pudu, Kuala Lumpur at about 12.47 p.m. In one of the rooms they saw the appellant filling drugs into a plastic tube. On seeing the police the appellant made an attempt to escape by jumping from the first floor. In the room the police recovered:

(i) 18 plastic packets and 72 plastic tubes containing a light brown powder which on analysis was found to contain 55.37 grammes of heroin and 8.58 grammes of morphine.

(ii) 249 empty plastic tubes.

Some of these exhibits were found on a bed, some on the floor and the rest on the dressing-table in the room. The appellant was seen sitting on the bed when filling the plastic tube. According to the landlady the room was rented by one Ah Kee and she had seen the appellant visit Ah Kee two or three times previously.

In his defence the appellant said that he was a drug addict and went to see Ah Kee that day to buy drugs. Ah Kee was not in and so he helped himself by pouring the drugs into a plastic tube when the police arrived and he tried to run away from them. According to him he had known Ah Kee for two weeks. During this time he had purchased drugs from Ah Kee. He had been taking drugs for one year and spent about $30 to $40 per day on drugs. At the time of his arrest he was helping his father who is a pork-seller. He does not say how much he is paid by his father but when he was a lift-fitter in Singapore he earned $5 per day. He denies packing the drugs for sale.

On these facts the learned President found the appellant guilty of the charge. In arriving at this decision however the learned President found that the appellant was "not a drug addict but one who was preparing the way for drug trafficking as stated in the charge." He based his conclusion on the first finding from his observation of the appellant in court. I do not have that advantage but from a perusal of the record there was no justification for this finding. Be that as it may, there was ample evidence to support the second finding of the learned President. If the purpose of the appellant in visiting the room was merely to help himself to drugs all he had to do was to pick up a few of the 72 filled plastic tubes. There was no necessity to fill a new plastic tube. It is common knowledge that dangerous drugs like heroin and morphine in powder form are sold retail to drug addicts in plastic tubes like the ones recovered by the police here and a court may now presume the existence of this fact under section 114 of the Evidence Act, 1950. There can be little doubt that Ah Kee's room was used for the preparation of drugs for sale.

On the facts of the case it was irrelevant to the defence whether the appellant was a drug addict or not. On the contrary the fact that he claims he is a drug addict does not assist the defence but strengthens the prosecution's case that he was packing the drugs for sale. He had no visible means of income but was spending $30 to $40 per day on drugs. It is reasonable to infer that to satisfy his craving for drugs he had to earn it by assisting in its distribution.

I see no cause for disturbing the learned President's finding of guilt and hold that the appellant was rightly convicted of the charge.

Once convicted there was little else the court could do but pass the mandatory sentence of life imprisonment.

I accordingly dismissed the appeal and confirmed the conviction and sentence.

Appeal dismissed.

Solicitors: *Jagjit Singh.*

CHUNG KHIAW BANK LTD. v. MULTIDEV SDN. BHD. & ORS.

[O.C.J. (Gunn Chit Tuan J.) November 24, 1977 and January 19, 1978]

[Kuantan — Civil Suit No. 15 of 1977]

Practice and Procedure — Application to strike out defence and counterclaim — Triable issues — R.S.C. 1957, O. 25 r. 4, scope of — R.S.C. 1957, O. 28 rr. 4 & 12, O. 23 r. 6, O. 70.

The plaintiffs applied for an order to strike out the defence and counterclaim of the first, second and third defendants and asked that judgment be given in favour of the plaintiffs. The latter alleged that the first defendants were indebted to them in the sum of $266,425.54 being the amount due by the first defendants on a term loan granted by the plaintiffs to the first defendants. As a security for the said loan the first defendants by a debenture dated January 16, 1976 charged their roof tile machinery in favour of the plaintiffs. The second and third defendants were the guarantors of the first defendants by a guarantee dated January 28, 1975.

The first defendants averred and contended that the plaintiffs had agreed to open a letter of credit for the sum of M$146,637.15 for the purchase of the machinery by the first defendants. The latter claimed that the plaintiffs had agreed to increase the amount to $387,328.30. On arrival of the said machinery, the plaintiffs refused to deliver up the bills of lading, invoice and certificate of origin, thus preventing the first defendants from taking delivery. The plaintiffs having taken delivery of the machinery on August 12, 1974 sought to impose new conditions for the release of the machinery. The first defendants signed the debenture dated January 6, 1975 containing the new conditions to secure the release of